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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bowen-Leaver, et al.

Serial No.: 09/897,871

Group Art Unit: 1617

Filed: July 2, 2001

Examiner: Yu, Gina C.

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For: Ringing Nanogel Compositions

RESPONSE PURSUANT TO 37 CFR 1.116Remarks

In the final office action of June 3, 2004, rejections of the claims of the present invention under 35 U.S.C. §103 as being unpatentable over three sets of references are maintained. Applicants assert that the cited references fail to teach or suggest a self-structured nanogel like that of the present invention. Pursuant to 35 U.S.C. §103, a *prima facie* case of obviousness requires, *inter alia*, establishing that prior art reference(s) teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The ringing nanogels of the present invention contain an oil phase and a silicone oil component comprising at least one volatile oil that are self-structured and have a difference in complex viscosity of at least about 10,000 poise under oscillation stress in the range of about 0 to 5,000 (dyne/cm²). The nanogels of the present invention upon application to the skin feel pleasantly smooth at first and then transitions to a wet-like feel that is refreshing on the skin. However, because the composition is a gel, the consistency is not thin and drippy like water, and it is not tacky like other gels. This feeling and consistency is surprising especially since it is achieved with the oil phase and the silicone component that are self-structured. This is not taught or suggested by the cited references.

The '551 Reference

As taught in the '551 reference, at column 8, line 41 to 12, the '551 compositions include microemulsions without a crosslinker component used as precursors for the gels obtained with the crosslinker; but that can also be the '551 gels. In response to Applicants' previous arguments to the first obviousness rejection based on U.S. Patent No. 6,468,551, "the '551 reference," the Examiner asserts that Claim 1 of the present invention does not require that the composition be a "ringing" gel. However, this does not respond to Applicants' previous argument that the '551 reference fails to teach or suggest the low amount of emulsifiers in the present invention without the need for not only emulsifiers, but also thickeners and gelling agents. The '551 teaches the use of certain emulsifiers, and lecithin, a known